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THE PLAN FOR NEW REGULATION OF THE TERMINATIONS OF EMPLOYMENT CONTRACTS IN THE MIRROR OF THE DISMISSAL REGULATIONS OF THE MEMBER STATES OF THE EUROPEAN UNION*

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1. The aspects of the Subject Matter and the System of its Proceeding

The Proposal (PROPOSAL) for the new Labour Code (LC) was published on July 18, 2011./1/ In our present study we are making an attempt to examine objectively the proposed rules of the termination of employment by comparing them with the legal rules of the Member States of the European Union, especially those of the old Member States. Based on this legal comparison, we'll make our conclusions and Proposals attempting to help to improve the codification material.

2. Ordinary Termination of Employment

1) The Proposal regulates ordinary termination of employment in sections 65 to 67. In the case of a dismissal affecting the employee, the modern European labour law regulations provide larger protection against dismissal for the safety of the employees' living. In compliance with this principle, the dismissal initiated by either the employer or the employee shall be made in writing, moreover, the employer has the obligations to give the reasons for the dismissal. The reasons – even in accordance with the Proposal – shall be valid and related to the employment relationship. This specific rule is implied in our present Labour Code, and this was also further clarified by an opinion issued by the Labour Division of the Supreme Court.

This requirement is properly defined in the first two subsections of section 66 of the Proposal. The now prevailing prescription pursuant to which the employer is obliged to hear the employee before termination is still missing. All the West-European legal systems contain the obligation of hearing prior to termination initiated by the employer. We must consider as a result the fact that the original effort according to which employees at small or medium sized undertakings may be dismissed without reasoning if they are employed for less than a year is missing from the Proposal. This kind of a legal solution would be in contradiction with the European Social Charta, because pursuant to that the employer is obliged to give reasoning for termination in all cases of employment terminations. Starting from that we can question whether the possibility of neglecting reasoning in the case of the

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employment termination of a retired person (Section 79 of the Proposal) may not be in contradiction with the prescriptions of the Social Charta.

It can also be a problem that Section 68 clears out the prevailing regulations of the protection against dismissals when in the existence of such circumstances earlier the employer was not able to dismiss the employee, now he/she will be entitled to do so in the future. This means that upon ceasing of the regulated circumstances giving protection against dismissal, the notice period will automatically begin.

2) All this appears in the labour regulations of the new and old Member States of the European Union as follows:

A) In the German legal systems

a) In Germany the termination of employment by means of a dismissal is regulated by §§ 611-630 of the Civil Code (CC, *Bürgerliches Gesetzbuch*), the Protection against Dismissal Act (KschG) and the Act on Collective Dismissal (Massenentlassung) (Mentl.G).

The German Labour Law differentiates four different groups of grounds on which the termination of the employment at the employer's initiative shall be based:

- a.) dismissal on the grounds of the employee's breach of the contract by not or not adequately performing his/her obligations arising from his/her service relationship;
- b.) a personal feature inherent in the employee which renders the employee inadequate for his/her obligations arising from his/her labour/service contract (e.g. illness without the hope for remedy or long term illness, incapability to adapt to the technical modification of his or her job because of elderly age, e.tc.);
- c.) dismissal resulting from the economic situation of the employer (*betriebsbedingte Kündigung*), the collective form of which is the collective redundancy (*Massenentlassung*);
- d.) and finally, the so called 'Änderungskündigung'.

Pursuant to Section 314 of the BGB, the termination of employment by means of dismissal at the initiative of the employer shall be given in writing to the employee and it must contain the reasons for the dismissal, too. Previously, however, the employer shall notify the employee about the problem(s) with his/her performance and the fact that its continuity may or will result in dismissal. In the case of repeated smaller misconducts, the employer may warn the employee giving him/her a trial period before dismissal with the aim of making the employee improve his/her conduct. If the termination of employment takes place and the employer does not comply with the above rules by giving the notice, the dismissal is ineffective. These rules are the same in the other Member States, too.

Ordinary termination will become effective after a period of notice of at least four weeks elapsing on the fifteenth or the end of the calendar month. The maximum period of notice – depending on the years spent in the employment of a given employer – goes up to seven months. A collective or an individual contractual agreement can extend, however, cannot shorten the minimum of the statutory periods of notice. (*Günstigkeitsprinzip*). Although, in the case of service relationship contracts (*Dienstvertrag*) – which mean greater freedom – regarding that the servant with a greater scope of movement may find another job/place of work easier than the employee with fixed place of work having a narrower social contact circle – the notice period is *ex lege* shorter. However, individual contractual agreements can extend this statutory shorter period of notice, too. (BGB 61. §) /2/

Pursuant to KschG., the following employees are protected from dismissal: a) women during pregnancy and four weeks thereafter; b) both parents on parental leave; c)

employees being on a long-term time off because of childcare or the care for a close relative; d) employees being on sick leave for the period of time defined in the Protection against Dismissal Act, and e) employees with a permanently reduced work capacity (Schwerbehinderte) /3/. People near retirement –of protected age – may not be given a notice unless – according to practice - on objective personal grounds or from economic reasons arising on the employer's side. /4/

The employee may terminate his/her employment with a two week period of notice at any time. The notice must be issued in writing though it shall not contain reasoning.

The termination of employment for a fix period of time or for the completion of specific work constituting special forms of dismissal may be executed only on the grounds involved in the employment or collective agreement. The *Teilzeitbeschäftigungsgesetz* (TzBfG.) also prescribes that the employee shall be notified about the notice one week before the notice period commences. When the notice period expires and the employee goes on working, the employment becomes contracted for an indefinite time. /5/

b) The Labour Law in Austria follows the German regulations as far as ordinary dismissal (Kündigung) is concerned with the *Angestelltengesetz* prescribing statutory obligatory period of notice (Kündigungsfrist) only for white-collar workers. The basic notice period in the case of employer's dismissal is 30 days, from 1 up to 2 years of service it is 6 weeks, between 2 and 5 years of service it is 2 months, between 6 and 15 years of service it is 3 months, more than 15 years of service up to 25 years of service it is 4 months, and over 25 years of service it is 5 months. If the termination is initiated by the employee, the notice period is 1 month. The employee may terminate his/her employment by the last day of the month (Kündigungstermin) and the notice period shall commence on the first day of the subsequent calendar month (Kündigungsfrist). /7/

As far as other questions – like the way of giving the notice and the protection against dismissals – are concerned, the Austrian Labour Law follows the German rules. /9/

c) In the Dutch labour law the employer may give a notice of dismissal to the employee with the prior consent of the works council and the employment authority. The statutory notice period of ordinary dismissal in the case of more than 5 year employment is one month, from here on it is increased by one month each time the worker has completed his/her 5th year working for the same employer and it is maximum 4 months after 15 year of employment. With mutual consent, the parties may lengthen the notice period like in other Member States; however, they may not set a shorter period of notice. Though even contractually set notice period may not exceed six months. /10/

The termination of an employment relationship by means of an ordinary dismissal with notice and its reasoning must be made in writing to be effective, which may be abandoned if it is included in a court-approved settlement or minutes. The grounds for dismissal and protection against dismissal are the same as in the German and Austrian labour law. /11/

B) In the French-Latin Member States

a) The notice period in the case of a dismissal initiated by the employer in France is governed by the *Cod du travail* (the French Labour Code) and *Usance*. According to them, the employment relation is terminated by a maximum of six months' notice period. Collective agreements – especially sectoral ones - may specify longer or shorter periods of notice.

During the period of notice the employee shall be discharged from his job for two months. This longer exemption period offsets the possibility of the more unfavourable contractual deviation of the notice period on the employee's side.

If the dismissal at the initiative of the employer is based on objective or imputable subjective reasons relating to the employee's person (see German law), the first stage of the dismissal should be the hearing of the employee in person. Afterwards, the notice period commences with the notification of the written notice of dismissal containing even the reasoning. The regulations of the protection against dismissal are similar to the ones in the German law implying the protected age, as well. /12/

b) In the Belgian labour law when a blue-collar worker is dismissed, the period of notice should be 35 days for workers who have been employed from half a year to five years and the notice period rises to 42, 56 and 84 days by every five year service is completed, reaching the maximum of 112 days after 10 year employment.

The notice period in the case of white-collar workers – with the same system mentioned above – reaches 12 months after 5 years in service. This relatively long notice period may be redeemed by decent amount of redundancy pay.

The beginning of the notice period in both employees' structures is the first day of the week – i.e. Monday - succeeding the week of the dismissal's notification.

The Dutch labour law prescribes the obligation of reasoning not only for the employer but also for the employee. However, the dismissal notice shall not always be made in writing; oral form of the dismissal notice is also acceptable. /14/ The protection against dismissal is analogous to the French regulations. Therefore, employees near retirement age are protected against dismissal. /15/ Besides, the Belgian labour law knows the so-called 'implicit' dismissal exercisable by both parties when there is a change in any element of the employment contract. /16/

The probation period - similarly to the labour law of Luxembourg - may be determined between 1 and 3 weeks. In the case of more qualified workforce, it can be 6 months or even 1 month. However, the notice period for all types of workers is statutorily ruled uniformly from 2 days to 1 month. /17/

c) In the Italian labour law, the dismissal initiated by the employer is justified by : a) a sound reason related to the employee's person, which may be the non- or inadequate performance of his/her work obligations, or indiscipline or disobedience at work; b) a statutory reason which may be related to the employee's person restraining him/her from performing his/her duties permanently and c) an economic reason in the sphere of the employer's interest or by any reason which may not be attributable to the employee.

The dismissal notice shall be made in writing and reasoning shall also be implied. The default of either the written form or the reasoning shall make the dismissal void. If the employee requires detailed reasoning after receiving the dismissal notice, the employer has 10 days after the receipt of the notice by the employee to give it. Besides, within 60 days, he/she has the right to take the dismissal notice in front of reconciliation committee. In the case of a failure of reconciliation, the notice of dismissal may be avoided before court. The system of protection against dismissal and the rules of dismissal initiated by the employee are in compliance with those of the Member States shown above. /18/

d) The Spanish Labour Law makes a distinction between dismissal based on objective reasons and reasons of disciplinary nature. Ordinary dismissal may only be made on objective grounds.

In the case of objective notice of dismissal, the reasons for dismissal may be as follows: a) a personal feature inherent in the employee which renders the employee either professionally or objectively inadequate for his/her obligations arising from his/her labour/service contract (long term illness, incapability to adapt to the technical modification of his or her job) b.) on the employer's side, the necessity for redundancy due to economic or organisational reasons involving the situation when the employee may not be longer employed full-time. Protection rules are the same as the ones in the previously mentioned Member States and dismissal notice may be given only after the protection period is over. The dismissal notice with reasoning shall be given within 14 days but 60 days the latest after the grounds for dismissal coming to the knowledge of the employer. The dismissal notice given not in compliance with these rules is reckoned as void. /19/

The period of notice is 30 days, which in the case of the employer initiated dismissal rises up to a maximum of 60 days depending on the time spent at service. Parties may agree on a longer notice period. The works council shall be notified in advance before dismissal initiated by the employer. However, the works council does not have the right to agree or disagree; it can only give an opinion. /20/

e) The Portuguese right for termination of employment relationship by dismissal requires that dismissal to be for 'just cause' or 'without just cause' in the cases of dismissals initiated by both the employer and the employee. The dismissal is for 'just cause' corresponds to the Italian categorisation of reasons for dismissal. The dismissal at the initiative of the employer is regarded as for just cause if its reasons are related to the enterprise, objective economic or organisational reasons. The dismissal is regarded as for 'without just cause' if it is for reasons that relate to losing confidence or minor misconduct. The employer may give a notice to the employee on the grounds of 'just cause' after a 30 day period of tolerance based on the following reasons: a.) weak quality of work; b.) repeated cause of damage; c.) incapability of working in a new or more qualified position; d.) behaviour dangerous for his/her colleagues' health or causing accident risk or unwillingness to adapt; e.) lack of possibility to transfer in another position. As for the employee, the dismissal initiated by him/her can be regarded as for 'just cause', if his/her payment is not paid off, he/she is not provided by work and accident or accident risk at workplace. Moreover, the employee may give a notice on other grounds, too, 'without just cause'. /21/

C) Labour Law in the Scandinavian Member States

a) In Denmark, in the case of a worker, the dismissal is without any formal requirements and based on civil law evolved by judicial practice. However, each party shall be notified about the dismissal clearly and expressly. The notice period in the case of a dismissal at the initiative of both the employer and the employee is determined by sectoral and collective agreements, in the lack of them by employment contracts. Otherwise, based on the practice developed for permanent employment relationships, the notice period is 2 weeks.

Whereas, the legal status of servants (funktionar) and the notice period relating to them is regulated similarly to the Austrian Angestelltengesetz by the 'Funktionarlowen' (FUL). Pursuant to FUL, if the employee has a service of less than 6 months, the notice period is 1 month, with more than 6 months' service, the notice period is 6 months. In the case of workers, collective agreements do not assure notice period in the case of employment of less than a year, however, over one year of employment, they provide a notice period,

which increases by a week every time the employment reaches another year. The notice period in the case of 5-6 years of employment is 60-65 days, while in the case of a 10-year employment; it can even reach 4-5 months.

As far as the reason for dismissal in the case of a dismissal initiated by the employer is concerned, the practice differentiates between attributable and non-attributable causes on the employee's side and economic causes relating to the enterprise on the employer's side. Protection against dismissal - similarly to the Swedish and Finnish legal systems - is in compliance with the rules of the European Union. /22/

b) In Sweden as regards dismissal initiated by the employer, the causes for dismissal can be divided into personal related culpable and innocent causes, and economic reasons. If the cause of dismissal is related to the employee's personal incapability, the Swedish law allows – similarly to the Danish – the employee's transfer if a suitable job is available.

The employer –after a prior warning – should give the notice in writing including causes, while the employee is entitled to give an oral notice, too. In the case of a minimum 2 year employment, the notice period is 1 month. Thereupon, up to 10 years of employment, it is increased by one month each time the employer has completed one year employment, and after 10 years of employment, it reaches 6 months. Collective and/or employment agreements may specify longer periods of notice. Other questions are regulated similarly to the Danish law. /23/

c) In the Finnish labour law as regards employer's right for dismissal, there are objective and subjective severe causes related to the employee's person and economic reasons on the side of the employer. Protection against dismissal is regulated similarly to the previously discussed countries. In the case of an ordinary dismissal, a warning must be given one week prior to the notification of the dismissal. If the dismissal is based on economic grounds, the employee has a preferential right for employment within 90 days after the dismissal notice was given. Pursuant to the Finnish employment contract Act, the termination of an employment relationship by means of an ordinary dismissal with notice including the cause – likewise in the other Member States - must be given in writing to the employee. /24/

The notice period - in the case of a dismissal at the initiative of the employer - is 14 days if the period of employment was between 1 month and 1 year, 1 month if the period of employment was between 1 and 4 years, 2 months if the period of employment was between 4 and 6 years, 4 months if the period of employment was between 6 and 12 years, 6 months if the period of employment was more than 12 years. /25/ However, the employee is entitled to work exemption of 5 working days if the notice period is 1 month, 10 working days if the notice period is between 1 and 4 months, 20 working days if the notice period is more than 4 months. /26/

D) The Anglo-Saxon legal systems

a) The legal regulations in the United Kingdom know the ordinary dismissal with a notice, which may be based on two kinds of grounds for dismissal. The first type is based on a contractual agreement, while the other one is regulated by the Employment Rights Act of 1996, which is based on statutory grounds. In the case of a dismissal on contractual grounds, the notice period is a maximum of 6 months if it is at the initiative of the employer, and half of this period if it is initiated by the employee. Pursuant to the Employment Rights Act, in the case of a dismissal by the employer, the notice period is 1 week if the period of service was between 1 and 2 years, 2 weeks if the period of service

was between 2 and 3 years, and the notice period increases by one week after each year of service until it reaches the maximum of 12 weeks. A so-called dismissal agreement – in the cases of both contractual and statutory dismissals – may entitle the parties to waive the notice period and to agree on financial compensation instead. /27/

The causes for dismissal developed in the legal practice of the United Kingdom are as follows: a.) reasons related to the employee's ability; b.) reasons related to the conduct of the employee at the workplace including the non-performance or not correctly performance of his/her job obligations; c.) reasons of economic and structural nature (redundancy); d.) statutory prohibition from a position/job; e.) other valid reasons including causes related to the employee's person, which is an objective, non-attributable cause. Pursuant to the Employment Rights Act, all the employees, regardless of the employment period, are entitled to protection against dismissal, whereas, in the case of a contractual kind of dismissal, the employee has the right for protection only if he/she has an employment period spent at the given employer of at least a year. However, the provisions regulating when the dismissal is prohibited are in compliance with those of the above discussed EU Member States. /28/

An employee whose contract has been terminated because of economic and structural reasons, that is on the grounds of redundancy, is entitled to receive a redundancy pay. /29/

b) In Ireland the rules of dismissal with a notice are very similar to those in England. In the case of a dismissal at the initiative of the employer, pursuant to the Employment Rights Act of 1973, the employee is entitled to a notice period of 1 week, if the period of service was between 13 weeks and 2 years, 2 weeks if the period of service was between 2 and 5 years, 4 weeks if the period of service was between 5 and 10 years, 6 weeks if the period of service was between 10 and 15 years, and 8 weeks if the period of service was more than 15 years. Collective and/or employment agreements may specify longer periods of notice on the basis of the parties' agreement. The employee is entitled to a severance payment for the period of notice if the cause of the dismissal is not a breach of the contract. The Act on Unfair Dismissal of 1973 distinguished between two causes for dismissal: a.) the lack of capability and qualification; and b.) breach of contract. The employer must inform the employee about his/her intention for dismissal with reasoning prior to the actual dismissal. Only afterwards the notice of dismissal may be given to the employee in writing including the cause for dismissal. The rules of protection against dismissal are similar to the English regulations. /30/

If the dismissal is based on economic grounds, pursuant to the Redundancy Pay Act, the employees between the ages of 16 to 66 are entitled to a redundancy pay if they spent at least 104 weeks at the same employer. The amount of redundancy pay is based on a mutual agreement between the employer and the trade union, and it depends on the dismissed employee's monthly pay, the length of service period, his/her age and marital status. In the case if the employee does not accept a job transfer, he/she is entitled to only half of the compensation payment like in the English law. /31/

E) In the New Member States of Central Europe

a) In Poland the possibility for dismissal in the case of an ordinary dismissal depends on the form of the employment relationship. The employment for an indefinite period of time may be terminated by both the employer and the employee at any time. However, in the case of the dismissal initiated by the employer, one or more trade unions' - having representatives at the establishment – opinion must be asked for prior to dismissal. The employer shall

notify the trade union's representative at the establishment about his/her intention with reasoning 5 days before giving notice. The trade union's opinion may be decisive in the case of a court proceeding. The reasons arising on the side of the employer are defined by the Codex Pracy (Labour Code) and can be divided into three groups: a) the employer's losing confidence against the employee; b.) the lack of conformity to his/her colleagues on the side of the employee; c) losing positions in the board of directors or supervision directors at the employer; d) economic reasons at the establishment. /32/

In the case of a dismissal at the initiative of the employer, the employee - depending on his/her employment period - is entitled to a period of notice, which is 2 weeks in the case of a service period shorter than 6 months and 3 months if employment period is more than 3 years. Parties may agree on more favourable notice periods than those specified in the Codex Pracy. According to the developed legal practice, the notice period is usually maximum 6 months. The other form of dismissal is dismissal during probation period. Both the employer and the employee may give a notice during the probation period. If the notice is given by the employer, the employee is entitled to a notice period of 3 days in the case of a probation period of not more than 2 weeks, 1 week in the case of a probation period of more than 2 weeks, and 2 weeks in the case of a probation period of maximum 3 months. It is worth mentioning that the Polish labour law took over the institute of *Änderungskündigung* from the German dismissal law. /33/

b) The Czech dismissal law groups the causes for dismissal at the initiative of the employer into 4 groups: a.) causes of structural nature, which are on the side of the employer and therefore the work of the employee is redundant; b.) health reasons based on a physician's opinion, which make the employee unable to perform his/her duties defined in the employment contract (infectious diseases, etc.); c) employment incapacity, one form of which is the attributable or non-attributable not –correctly -performance of the employer's demands, another form of which is the not suitable attitude towards the given job; d.) severe or less severe, but repeated infringement of the job obligations arising from the employment contract. The employee – except for the reason under the point d.) – is entitled to a notice period of at least 1 month, however, the parties can agree on a longer notice period, too. As regards the notice period, the Czech law – similarly to the German law – specifies longer notice periods for employees with fixed employment than for employees employed by free service employment contracts, who have more possibilities to find another job/place of work.

The cases, when an employee is protected against dismissal are – except for the last case – the usual ones. During the period under which the employee is protected – like in the older Member States – it is not allowed by law to terminate employment or to notify the employee about the termination of the employment. The employee is protected against dismissal by a notice of termination in the following cases: a.) during a period when it is recognised that the employee is temporarily unable to work due to illness or injury, b.) during a period when the employee is called up for duty in the armed forces or in civil service; c.) during a period when the employee has been given long-term unpaid time off in order to hold status/public office; d.) during a period when a female employee is pregnant or on maternity leave and during a period when a female or male employee is on parental leave; e) during a period when a night worker is recognised, on the basis of a medical expert's opinion, as being temporarily unfit for night work. In the case of restructuring,

when an employee who belongs to the above mentioned categories loses his/her job, the labour authorities must find a job for him/her with a high priority.

The employee is *ex lege* entitled to redundancy pay only in the cases when his/her employment is terminated because of restructuring, economic reasons, and health related causes. The redundancy pay in the first case is 3 month pay/salary, while in the second case it is 12 month pay/salary. However, redundancy pay may be paid freely to the employee in the case of any kind of employment termination on the basis of a separate agreement.

During the probationary period, any party may terminate the employment relationship with an immediate effect without reasoning. However, if the employee becomes ill during the first 14 days of employment, he may not be dismissed. Namely, because the employer may not be convinced of the suitability of the newly employed person in such a short period of employment. The difference from the Hungarian regulations is that both parties must notify the other party about the dismissal 3 days prior to termination. /34/

c) In Slovakia, Sections 61-63 of the 'Codex prace' determine the requirements when an ordinary dismissal with a notice or an extraordinary dismissal shall take place. The employer may terminate employment relationship on the grounds of the following reasons grouped into four categories: a) structural causes related to the operations; b.) health related causes; c.) unsuitability for service; d.) infringement of work discipline. These circumstances are almost similar to the causes defined in the Czech Codex Prace. Otherwise, the Slovak dismissal law is similar to the Czech law. This is valid for regulations of the notice period – taken from the German law - which is diversely specified in service and employment agreements - defining longer notice period for employees with fixed employment. /35/

d) The Romanian Codul muncii differentiates between ordinary and extraordinary dismissals. In the case of an ordinary dismissal at the initiative of the employer, which is related to the employee's person, the employer may only terminate the employment relationship upon the following 4 groups of reasons: a.) severe or repeated infringement of obligations determined in collective agreements, plans of work or works agreements; b.) more than 30 day imprisonment due to criminal proceedings; c.) physical or mental incapability of the employee to fulfil his/her duties; d.) professional incompetency of the employee for the given position. /36/

Economic reasons related to the employer's operations may be namely the liquidation of a given position, place of work or structural unit or the closing-down of the company. In the case of termination due to economic reasons, regardless whether it is collective redundancy or not, the employee is entitled to one month pay/salary as redundancy pay. /37/

The basic notice period in the case of dismissal initiated by the employer is 15 days, in some cases 30 days, which increases up to 6 months according to the service period spent at the employer. In the case of termination by the employee, the notice period is 15 days, or 20 days if the employee is in a managerial position. /38/ The termination of an employment relationship by means of an ordinary dismissal with notice – no matter if it was at the initiative of the employer or the employee - must be made in writing to be effective, moreover, the employer shall even give reasoning. /39/

3) Conclusions and solutions which may be taken over in the new Hungarian Labour Code based upon the legal comparison:

a) The first is that the old and the new EU Member States determine the statutory causes for the employer's termination of an employment relationship not based on an employment

agreement. However, the Hungarian labour law does not contain such causes. This is valid for both the prevailing Labour Code and the Proposal. As regards employees' status safety, it would be useful to complete Section 65 of the Proposal with Subsection 2 enclosing such causes for dismissal as a synthesis of the rules of the legal systems of the Member States described beforehand.

Besides, it would be practical to divide the causes related to the employee's ordinary dismissal into a.) attributable and b.) non-attributable causes related to the employee's person and c.) causes related to the employer's operations (economic and structural). It would be useful not only for the sake of dogmatic clear-sightedness but also because it would be reasonable to establish the possibility to give the employee a reduced amount of redundancy pay even in the case of dismissal on the grounds of attributable causes.

Neither the prevailing Labour Code nor the Proposal contains this kind of a possibility, due to which employers take the opportunity of the institute of the extraordinary dismissal even in the cases of less severe misconduct or attributable mistakes. It would also be proper to divide the causes of ordinary dismissal on the employee's side into two groups: a.) causes related to the employer: one is related to the employer's conduct, the other is related to the condition of the operations when the employee is entitled a redundancy pay, while b) causes which are in the sphere of interest of the employee and about which the employee is not obliged to inform the employer, however, in the latter case the employee is *ex lege* not entitled to redundancy pay.

The *justa causa* (just cause) and non *justa causa* system on both sides in the Portuguese law and the two types of causes of employer's dismissal, namely a.) the lack of capability and qualification; and b.) breach of contract of the Irish Unfair dismissal Act may be taken into consideration explicitly from a dogmatic point of view.

b) Section 65 of the Proposal may also be amplified by the possibility of the termination of permanent employment agreements after 3 or 5 years, which solution is known from the German and other Member States' legal practice and is similar to the German Hartz IV - in order that the state granted employment - connected to the proposed extension of diploma giving education by the Hungarian employment policy - shall be effective enough.

c) Termination of the employment and notification about it may not take place during the period of protection against dismissal in none of the Member States. Termination may be executed only when this period expires. Dispatching the termination notice during the protection period may be harmful for the development of the embryo and the baby especially during the first semester of pregnancy or maternity, because the mother may become very worried. For the sake of physical and mental relaxation of the workforce, it would be reasonable to extend such protection to periods of ordinary paid holiday, too. (Section 68 subsection 2 of the Proposal)

d) Pursuant to subsection 1 of section 69 of the Proposal, when the dismissal is initiated by the employee, the employee is entitled to only 30 days of notice period. This regulation is in compliance with most of the above described foreign solutions. However, it must be considered that the cause of the dismissal is not attributable to the employee, but it is necessary due to objective causes related to the employee's person (e.g. illness or the deterioration of health condition) and the employee should have the right for redundancy pay even in the case of an ordinary dismissal instead of having to terminate his/her employment relationship with an extraordinary notice of dismissal. This would not be detrimental even for the employer since in the case of an employment termination on the

basis of such a cause the employer is obliged to pay redundancy pay even if the employee gave an extraordinary notice of dismissal with an immediate effect.

e) Section 77 of the Proposal determines the amount of severance pay in a sum equal to the employee's average wages due for the period of exemption from work, which is lower than the redundancy pay on the basis of average wages specified by the prevailing Labour Code. If the government - on behalf of the employers - determines the amount of the severance pay in the sum equal to the employer's average wages due for the period of exemption from work everywhere, as a compensation, the notice period should commence not on the next day after the day of termination but - according to the legal rules of the above mentioned Member States - on the first day of the week following the day of the receipt of the dismissal notice or on the last day of the current month or the first day of the consecutive calendar month.

f) It would be worth considering that similarly to the Austrian and Belgian law - on behalf of both the employer and the employee - the notice period shall be regulated - affecting the amount of redundancy pay, as well - differently depending on the fact whether it concerns a worker (*Arbeiter*) or an employee (*Angesetzte*). As regards employees, it would be sensible to determine a longer notice period and a higher amount of redundancy pay because of the higher quality of work. It would also be proper to take over the Polish legal regulation according to which the termination of employment by the employer is prohibited during the first 14 days of the probation period in the case the employee gets sick.

g) Finally, it would also be useful to consider that in the case of ordinary dismissal the works council and in the lack of it, the trade union having representation at the employer shall be listened to prior to dismissal and asked for an opinion and prior to the termination of employment negotiations shall be entered into with the employer. In our opinion, this would be in alignment with the new - we think sensible - Hungarian employment policy.

3. Collective redundancy

1) Sections 71-76 of the Proposal regulate the collective redundancy. The criterion in Section 71 subsection 1 is defined in compliance with the criterion of the EK Directive No. 98/59, which may be implanted in the national law alternatively. Accordingly, there is a collective redundancy - depending on the average number of employees - in the case of a dismissal of at least ten workers, when the average number of employees over the past six months is more than twenty but less than one-hundred; at least ten per cent of the workforce, when the average number of employees over the past six months is greater than one hundred, but less than three hundred; or at least thirty workers, when the average number of employees over the past six months is three hundred or more based on economic or structural reasons. It is worth mentioning that pursuant to the previous EGK Directive of No. 75/129 it was regarded as a collective redundancy if the number of employees was reduced by at least five employees in undertakings of 10-20 employees, though this criterion was eliminated by the new Directive and even the now prevailing Labour Code does not contain it. Another criterion of both the old and the new Directive, which may be alternatively chosen by the Member States, is that a dismissal is regarded as a collective redundancy when 20 employees are reduced within 3 months due to economic-organisational reasons. Neither the now prevailing Labour Code nor the Proposal contains

this latter criterion. The Proposal contains – similarly to the Labour Code – the first criterion literally.

Pursuant to Sections 7 and 74 of the Proposal – similarly to the prevailing law – when an employer contemplates terminations of the employment of the above mentioned number of employees for reasons of an economic nature, he/she is obliged to notify the competent authority one week before the negotiations begin. The employer is also obliged to inform in writing the employees' representatives (first the works council and only in the lack of it one or more trade unions at the undertaking and if there are none of them, the representatives delegated by the employers) regarding the number of workers likely to be affected and the period over which the terminations are intended to be carried out, the aspects of choosing the workers for redundancy and the possibilities for avoiding or reducing the number of workers likely to be made redundant (Section 7 of the Proposal)

According to subsection 3, the employer's obligation for consultation lasts until an agreement is reached but at least for 15 days. This kind of phrasing keeps the legal practice in uncertainty. Namely, negotiations may last without end in accordance with this rule and the employee will probably endeavour this. Nevertheless, the employer will stiffen and after 15 days, he/she will break up negotiations. Section 94/C subsection 3 of the now prevailing Labour Code makes it possible to prolong the consultation for 30 days. However, this is not in compliance with the Directive, either, since pursuant to the Directive, negotiations last – as a main rule – for 30 days, which period may be prolonged with another 30- day period. Though, if the agreement is reached in a short period of time, this period may be shortened to 15 days.

It is sensible that Section 7 of the Proposal took over the regulation from the prevailing Labour Code according to which the aim of the negotiations is to avoid or reduce redundancy. However, it does not mention how to select workers who are to be made redundant. Whether to use the social aspects applied in most West-European countries or the principle of seniority connected to out placement insisted by IMF and the World Bank? The prevailing legal regulations and the Proposal contain both possibilities. Furthermore, Section 73 subsections 4 and 5 seem also problematic. Namely, these sections determine that the decisive element in scheduling the terminations is the decision of the employer while in reaching an agreement it is the employer's proposal. Beyond that it has to be reported on whether the ordinary dismissals executed apart from the framework of collective redundancy during or just before the period when the reason of economic nature existed were lawful or not. These regulations expressly reflect the employer's supremacy.

To sum up the above mentioned, it seems to us that the Proposal endeavours to decrease the disadvantages of collective redundancy, however, by making it possible to reduce the employer's compulsory negotiation period to 15 days, it supports the fast redundancy based on the principle of seniority insisted by the IMF and the World Bank. In Hungary, namely, the redundancy practice at most places reflects the principle of deciding on whom to make redundant depending on the employment period starting from shorter employment period towards longer employment period. We wonder whether old Member States follow the same procedure.

2) Following the legal comparison in the order of the previous title:

A) In the German legal systems

a) In Germany the Massenentlassungsgesetz follows the first criterion of the Directive and the dismissal is regarded as a collective redundancy when at least 5 workers are to be dismissed by an employer employing between 20 and 60 workers, or at least ten per cent of the workforce is to be dismissed when the average number of employees is between 60 and 500 or at least thirty or more workers are to be dismissed when the average number of employees is 500 or more. The beginning point is the first criterion of the Directive with some amendments. When this requirement of dismissal demanded by reason of an economic nature connected to the 30 day interval exists, the employer is obliged to initiate consultation with the works council, in the lack of it with the representatives of the employees' trade unions or representatives delegated by the employers and simultaneously he/she is required to notify the regional employment authority, as well. The period defined for consultation with the employees' representatives is 30 days which may be prolonged up to 60 days. The consultation begins on the basis of the social selection plan made by the employer where the most important aspect is to negotiate the possibilities of reducing redundancy. If there remained workers who are to be dismissed in spite of all this, they are dismissed according to the social selection plan. The terminations are required to be socially justified. Likewise in the cases of ordinary dismissal, the worker dismissed by collective redundancy is entitled to a redundancy pay (Abfindung) of half month salary multiplied by the number of years spent in service. /40/

b) In Austria pursuant to the labour law, there is a collective dismissal if the number of employees is to be reduced within 30 days by at least five employees in undertakings of 20-99 employees; by at least 5 per cent of the employees in an establishment with 100-600 employees; by at least 30 or more employees in an establishment with at least 600 employees. As concerns obligations for notifications, consultation and its length, the Austrian regulations are similar to the German ones. Another similarity with the German law is that even in Austria a social selection plan shall be made and the dismissals shall be socially justified. The difference from the German legal system is that the works council has a stronger power. If the works council unanimously opposes the employer's decision, first of all because of disputing the social selection plan, the employer's decision may be attacked by both the works council and the employees affected. Those who are affected by the collective redundancy are entitled to a redundancy pay (Abfindung) like in the German law. /41/

c) In the Dutch labour law, pursuant to Wet melding Collectief Ontslag, there is a collective redundancy when the employer contemplates to dismiss 20 employees for reasons of an economic nature within a period of 90 days. In this case the employer is required to notify the works council and the employment authority 30 days prior to consultation. The duration of consultation here is also 30 days and it may be extended to 60 days. According to the established legal practice, terminations are based on a social selection plan. The employer may not execute his/her intentions for terminations in respect of both the number of the employees planned to be dismissed and the selected persons for dismissal without the prior approval of both the works council and the employment authority. The redundancy pay is determined by 'AxBxC', the opinion of the canton judges, but most of all, A and B that is age and service period. /42/

B) The French-Latin Legal Systems

a) In France pursuant to Sections 321-1 and the subsequent sections of the Cod du travail, there is a „licenciement collectif” (collective redundancy) when the employer at a company with 50 or more employees contemplates to dismiss 10 or more employees within one month. The notification obligation is similar to that of the previously described three Member States and likewise in the German/Austrian labour law, in order to execute collective redundancy the employer in France is required to make a social selection plan and enter into negotiations about it. The duration of the consultation depends in the French law on the number of employees to be dismissed: 14 days if the number of employees to be dismissed remains under 100 and 21 days if the redundancy affects between 100 to 240 employees, and 28 days if this number is over 249. Pursuant to the Cod du travail, an economic expert, who is appointed by the employment authority at the first sitting, is to be initiated in the negotiations. The works council may require a legal expert to be initiated, as well. However, the works council has only the right for giving an opinion and proposing but it has no co-decision right. The regulations concerning redundancy pay are similar to those in the German law with the exception that in the case of employment of less than a year, it is not compulsory to give a redundancy pay. /43/

b) In the Italian labour law there is a collective redundancy if 5 or more employees are contemplated to be dismissed by an employer from a company with 15 or more employees within 120 days. In this case the employer is required to inform in an open letter the representative of the trade union at the company and the biggest trade union in the region. Within 7 days from the notification the consultation is to be initiated. The duration of the consultation is 45 days and 23 days if the redundancy is likely to affect less than 10 employees. The collective agreements say that the employees contemplated to be dismissed shall be selected taking into considerations social aspects, as well, besides the quality factors of the workforce. The amount of redundancy pay equals the sum of the payment due for the termination period. In the course of redundancy those who are protected from termination will be put on a special list and will enjoy priority during job placement. In Italy the amount of redundancy pay is the average payment for 36 months. /45/

c) In Spain pursuant to the labour law, there is a collective dismissal if the number of employees is to be reduced within 90 days by 10 employees in undertakings of 100 employees; by at least 10 per cent of the employees in an establishment with 100-300 employees; by at least 30 or more employees in an establishment with at least 300 employees. The notification obligations are different from the above described solutions in a way that in Spain and Portugal - besides the employment authority and works council - the trade union operating at the undertaking is also required to be initiated in the negotiations. The duration of the consultation is 30 days and it is only 15 days if the redundancy affects less than 15 employees. If the undertaking employs more than 50 employees a social selection plan is required to be made by the employer. /46/

C) In the Scandinavian Member States

a) In Denmark it is regarded as a collective redundancy - pursuant to the 'Lov om kollektive afskedigelser' - when at least 50 % of the employees are dismissed for reasons of an economic and structural nature at a company with employees of more than 100 within 30 days. In this case after the notifications having been sent to the works council and the employment authority, a consultation lasting for 6 weeks begins about the reduction of the

redundancy. The most important factor concerning redundancy is that it shall be on the basis of social selection and be socially justified. The employees affected by the redundancy are entitled to an average salary of 50 days. The works council has the right for recommendations while the affected employees have to right to appeal redundancy. /47/

b) In Sweden collective redundancy is also regulated by a separate act, the 'Fromjandelagen'. Pursuant to it, there is a collective redundancy - regardless of the size of the undertaking – when the employer contemplates to dismiss 5 or more employees. The employer is required to inform the regionally competent employment authority 2 months prior to the reason for dismissal. The obligation to notify the employees' representatives depends on the planned number of employees affected by the redundancy. If the number of the employees affected by the redundancy is between 5 and 25, the employer shall notify the employees' representatives - by simultaneously sending them the redundancy plan based on a socially justified selection method - 2 months, if the number is between 25 and 100, 4 months and in the case of a number of 100 employees 6 months prior to redundancy and he/she is also required to suggest the date for the commencement of the consultation, which may last for 30 days. /48/

c) In Finland the aim of the consultations with the employment authority and the works council lasting for 30 days is to cut down on the number of employees affected by redundancy. In order to achieve this, there is a special rule according to which the employer is required – while making the redundancy plan – to retrain employees who may be retrained or pre-superannuate those who are eligible for pre-retirement. However, the employer is not obliged to make a socially justified selection plan. /49/

D) In the Anglo-Saxon legal systems

a) In the United Kingdom - pursuant to TULR(C)A - when the employer intends to dismiss 100 or more employees within 90 days for reasons of an economic nature, he/she is obliged to notify the regionally competent employment authority and the employees' representative organ composed of independent delegates of the trade union 30 days prior to the planned redundancy about the date of the commencement of the consultation and the scheduling of the redundancy. The consultation period lasts – periodically – for 90 days. According to TULR(C)A , the aim of consultations is first of all – if possible - to avoid or reduce redundancy and to reduce employees' burden. In the selection of employees to be made redundant the most important criterion is - when this number is under 100 - the principle of seniority, and when this number exceeds 100, the selection is based on socially justified criteria. /50/

b) In Ireland the collective redundancy is regulated by the Protection employment Act. The dismissals are already regarded as collective redundancy when the employer contemplates to dismiss at least 5 employees at a company with 10 to 20 employees within 30 days. The Irish law also uses the first alternative of the Directive. The employer is obliged to inform the employment authority and the employees' representatives 2 weeks in advance and simultaneously to send the redundancy plan and propose a date for the commencement of consultations. The consultations last for 30 days and this period may be prolonged. The employees are primarily selected for redundancy on the basis of work-evaluation aspects. Pursuant to the Dismissal Act, the employees made redundant are entitled to an average wage for 104 weeks as a redundancy pay and during this period - upon new employment with the aim of economic reconstruction - they have a priority right for re-employment. /51/

E) In the Central-European new Member States

a) The Polish Codex Pracy uses the first alternative of the Directive as the criterion of the collective redundancy. The trade unions as the employees' representatives, in the lack of them, the works council and the competent employment authority shall be notified 20 days prior to the execution of the redundancy. The consultations –lasting for 30 days- shall be held with the participation of trade unions and the employment authority. Dismissals shall primarily be based on quality aspects and just secondarily on social ones. /52/

b) The Czech and Slovak Codex Prace – similarly to the Hungarian law – took over the first alternative of the Directive as the criterion of the collective redundancy. Consultations – like in the Directive – last for 30 days. The employer shall notify the employees' representatives and the employment authority about the redundancy schedule and the proposed date of the commencement of consultations 30 days in advance. The statutory aim of the consultations is to reduce the number of employees to be dismissed and to ease the disadvantages of the redundancy. The employees affected by the redundancy are entitled for a 3 month average salary. /53/

c) Pursuant to Sections 68-72 of the Roman Codul muncii (Labour Code) it is a collective redundancy – in compliance with the first criterion of the Directive – when 5 employees from a company employing 10 to 20 employees are dismissed. The employer shall notify the employment agency and the employees' representatives 5 days prior to the execution of terminations. The duration of consultations is 30 days, which can be shortened to 15 days. Those affected by the redundancy are entitled to redundancy pay and when the economic crises at the company is over, there is an obligatory re-employment for 9 months from the termination of the employment relationship. /54/

3) To sum up, as regards the Hungarian situation we would like to emphasize that in most EU Member States the selection of the employees for redundancy is based on social aspects. This is partly true even for the United Kingdom where in order to maintain work peace and social calmness in the cases of the dismissals of a larger number of employees, the selection of the employees is socially to be confirmed. However, in the Scandinavian states and Ireland, the quality of work and the qualification are the key factors in the selection. This latter shows up in the above described four new Member States, too. The principle of seniority itself does not come up anywhere. Taking into consideration all the above written, it would be reasonable in Hungary to co-use both the principle of social and quality-based selection method and only finally to use the time spent in the employment at the company.

In most countries the period of redundancy is 30 days and in only 3 countries it lasts for 90 days. These 3 countries are Holland, Spain and the United Kingdom. This latter solution is better for employees since the 30 day period –because it is too short – may be eluded easier. To a certain extent therefore there is a rule according to which more work plants or parts of plants are regarded as one as concerns the determination of collective redundancy, which rule shows its existence the most remarkably in the Italian law, but it also appears in the Proposal. However, considering the greater possibility for the elusion of the 30 day period, it would seem proper to leave out from the Proposal the presumption of regarding ordinary dismissals executed near the period when the problems at the undertakings emerge rightful or consider the use of the 90 day period for executing redundancy.

As the duration of consultations is concerned, it is - in almost all countries – 30 days, which period may be prolonged but it may also be shortened. Compared to that, the 15 day duration in the Proposal is too short, which in practice may bring the danger of the automatic use of the principle of seniority as a criterion for redundancy. The obligation for notifications of the employment authority and the employees' representatives in most Member States is required weeks earlier than in the Hungarian Proposal, or the prevailing Labour Code, which both require too short a period. Moreover, neither the prevailing Labour Code, nor the Proposal contains re-employment obligations for the employers after the crises ends. Neither do they regulate the situation when the employer made use of the means of transferring the employee into another position but the employee is not able to fulfil or properly fulfil the new job requirements due to personal reasons not imputable to him/her and therefore his/her employment is terminated, he/she should be eligible to redundancy pay from the company having transferred him/her into the new position. Contemporaneously, the involvement of a regulation in the Labour Code according to which the employee who contributed to the economic crises existing at the company would not be eligible to a redundancy pay would be in favour of the employers. In compensation - in order to maintain work places more efficiently - the employees' representatives should achieve that even making 5 employees redundant at companies in the size of near the border-line to be assessed as a small- or medium-sized enterprise should be regarded as a collective redundancy. From social, employment and safety policy's point of view, it would be reasonable to introduce the social selection principle in the new Labour Code at least in the cases of redundancies affecting a larger number of employees and also the solution of putting redundancy affected employees on a priority list for easier finding new employment.

4. Summary Dismissal/Extraordinary termination

Sections 78 and 79 regulate the summary dismissal, termination with an immediate effect, which – except for section 79 – is the synonym for extraordinary dismissal. It is of great importance that Section 78 subsection 1 of the Proposal defines the criterion of an extraordinary termination in the same way as the now prevailing Labour Code. Point a) defines the circumstances upon which an extraordinary dismissal may be executed similarly to the above discussed Member States, namely upon the infringement of important obligations intentionally or with gross negligence to a large extent. The now prevailing Labour Code and the Proposal both emphasize the subjective side of the infringement of obligations arising from employment contracts, which is contrary to the solutions of the old Member States, which rather apprehend the objective side of the infringement of employment contracts.

They determine primarily the serious or rude (*grobe oder schwere Verletzung*), or repeated infringements of obligations arising from employment contracts as the reasons for terminations with an immediate effect and the extraordinary termination. /55/ It would be worth considering that the reason defined under point a) should be rephrased similarly while point b) is problematic because of the definition causing legal uncertainty.

The reason namely 'If the employee otherwise showed a conduct, which makes the employment impossible' should be complemented – as a synthesis drawn from the phrasing of the above discussed Member States – so that the conduct making employment

impossible seriously damages the other party's or the work collective's economic, existential interests or interests of honour, health and work protection. Just to mention as an example, the law of the United Kingdom speaks of rude or repeated infringement of contractual obligations to a great extent and a seriously endangering conduct in connection with work. /55/ The French and Belgian law both emphasize the seriously condemnable character of the infringement of the contractual obligations. /56/

Section 78 subsection 2 of the Proposal – in a similar way to the West-European legal systems – prescribes that extraordinary terminations – like ordinary terminations – shall be put in writing with reasoning. However, it does not say anything about hearing prior to summary dismissals, although in all of the discussed West-European Member States it is a compulsory phase in the case of extraordinary and summary dismissals. It is only the Dutch law which makes it possible to neglect formal hearing; however, in practice the employee to be made redundant is entitled to respond to the reason of termination prior to dismissal. /57/ It would be worth considering the prescription of hearing before execution of the termination. This is how some potential misunderstandings may be cleared up.

5. The Legal Effects of Unlawful Terminations of Employment

Sections 82-84 of the Proposal stipulate the consequences of unlawful terminations of employment. As far as compensation due to the employee in these cases is concerned, Section 82 subsection 2 sets the limits as of 18 month pay due for the period of exemption. Pursuant to Section 83, the employer would be obliged for reinstatement of the employee only if the unlawful termination injured the principle of fair treatment or the employee was an employees' representative at the time of the termination. The new regulations of the Proposal want to abolish the now prevailing rule of Section 100 of the Labour Code according to which there is an obligation for full compensation and reinstatement as a main rule instead of which the labour court imposes compensation of 2 to 12 month average pay at both the employee's and the employer's (except for the case of termination resulting in discrimination) request.

On the contrary, the legal regulations in the old Member States – with a few exceptions – provide an opportunity not only for full but also for in corporeality compensation (Germany, Austria and Holland) when the termination damages even the employee's honour. In the case of the new Member States, the Codul muncii and the discussed Polish Codex Pracy, the Czech and Slovak Codex Prace stipulate that the employer shall compensate all the employee's pay dropped out and beyond this his/her actual damage. This rule also applies in most of the old Member States' legal systems – with the difference that – as opposed to the now prevailing Labour Code regulations – the pay which was given him/her as compensation from other employment relations shall not be taken into consideration. /58/. The compensation of employees is limited only in Italy and Ireland by setting a maximum limit for compensation – 15 month pay in Italy and 2 month pay in Ireland. /59/ The limit is much higher in the United Kingdom where the employee may be given a compensation pay in the amount of maximum 380 GBP weekly, and the exact amount – similarly to the principle of AxBxC of the Dutch canton court practice – depends on the employee's age, service period and weekly pay. Besides that, the compensatory damages shall also be taken into consideration, the maximum of which is 65.900 GBP /60/

In the case of unlawful terminations initiated by the employer – except for Austria, Belgium and the above discussed 3 Slavic new Member States /61/, in all legal systems – similarly to the now prevailing Labour Code – the prior demand is the reinstatement, which may be redeemed by the statutory amount of severance pay. /62/ In the Member States where this is not the case, the demand tends towards severance pay and compensation. The most refine example for that is the English solution discussed above. Taking into consideration all the above written, it would be reasonable to uphold the regulations of the now prevailing Labour Code.

Section 84 of the Proposal contains stipulations on the compensation the employer is entitled to in the case of the unlawful termination of employment initiated by the employee. The amount of compensation is equal to the average wages due for the period of exemption from work payable for the standard notice period. This amount of payment is required to be paid even when the employee does not hand his work over in the prescribed order. As far as the legal consequence of the first case is concerned, this is in compliance with the European legal system. In the second case, however, it would not be proper to use the same since it gives chances for the employer's corrupt practice to a large extent. It is much more sensible to lay stress upon the employer's the opportunity for the demand of his damages.

In the case of an obligatory payment of 5 month pay due for the period of exemption from work as an average compensation fee in the case of the termination of an employment contract made for a definite period of time by the employee, the employer would groundlessly enrich in the case of an employment relation of less than 3 months. Therefore, when the employee is employed for less than 3 months, the amount of damages should be limited to the amount of the payment for exemption from work due for only the period which is left from the definite period of time.

Regarding the possibility for the reimbursement of the actual damages of the employer beyond the above written, it would only be reasonable and not injuring equal opportunity if the limitation regarding the employee's demand for compensation towards the employer would be eliminated from the Proposal.

Notes

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4.III. , 12.II.5.; Löwisch, *Arbeitsrecht*, 7. Aufl. Werner Verlag, Düsseldorf, 2004. 1.f.

3 Zöllner/Loriz/Hergenröder, 6.II.

4 Zöllner/Loriz/Hergenröder, 24.V.

5 Löwisch, 1256-1266, 1294

7 Pelzmann, *Arbeitsrecht in Österreich*, Rz. 135-140., in: Hennsler/Braun (Hrsg.), Verlag Dr. Otto Schmidt, Köln, 3. Aufl. 2011. Hereinafter.: H/B.

9 *ibidem*

10 Hoogendoorn/Rogmus, *Arbeitsrecht* (továbbiakban röv.: Arbr.) in *Niederlanden*, Rz. 18-137., H/B. 807-819.

11 *ibidem*

12 Weltzer/Caron, *Arbr. in Frankreich*, Rz. 116-128., H/B. 360-363.

14 Matray/Hübinger, *Arbr. in Belgien*, Rz. 93 és 110-119., H/B. 168-179

- 15 ibidem
- 16 ibidem
- 17 Castegnaro, Arbr. in Luxemburg, Rz. 74-75., H/B. 77-78
- 18 Radoccia, Arbr. in Italien, Rz. 34-37., H/B. 304-314
- 19 Calle/Prehm, Arbr. in Spanien, Rz. 125-127., H/B. 1432-1434.
- 20 ibidem
- 21 Fedtke/Fedtke, Arbr. in Portugal, Rz. 86., H/B. 1090
- 22 Steinrück//Würtz, Arbr. in Danemark, Rz. 86-97+113-116., H/B. 235-238.+244
- 23 Kurz, Arbr. in Schweden, Rz. 108+130., H/B. 1250-1253.
- 24 Leppa/Henne, Arbr. in Finnland, 125-130+142., H/B. 119-121+142
- 25 Leppa/Henne, Rz. 144-148+152., H/B. 324-326
- 26 ibidem
- 27 Hart/Taggart, Arbr. in Grossbritannien, Rz. 144-148+152., H/B. 334-336.
- 28 Hart/Taggart, Rz. 58-63., H/B. 513-515.
- 29 Hart/Taggart, Rz. 70-71., H/B. 517.
- 30 Erken, Arbr. in Irland, Rz. 122-126., H/B. 1029-1030
- 31 Erken, Rz. 74-79., H/B. 574-577
- 32 Erken, Rz. 73. H/B. 574
- 33 Zimoch-TuhoŁka//Malinowska-Hyla, Arbr. in Pohlen, 181 H/B. 1849
- 34 Linhart/Ranics, Arbr. in Tschechien, Rz. 119-120. H/B. 1494.
- 35 Markecova/Klimanova, Rz. 11-113., H/B. 136-1363
- 36 Gotha, Arbr. in Rumänien, Rz. 137-155., H/B. 1152-1153.
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- 38 Gotha, Rz. 137-145., H/B. 1150,sk.
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- 48 Kurz, Rz. 141-143., H/B. 1255
- 49 Leppa/Henne, Rz. 156-167., H/B. 17-130
- 50 Hart/Taggart, Rz. 72-78., H/B. 518-521.
- 51 Erken, Rz. 85., H/B. 579.
- 52 Zimoch-TuhoŁka/Malinowka, Rz. 167-168., H/B. 1039-1040
- 53 Linhart/Ranics, Rz. 114-115., H/B. 1363-1364; Markecova/Klimanova, Rz. 119-17., H/B. 1363-13-64
- 54 Gotha, Rz. 165., H/B. 1156-1158
- 55 Hart/Taggart, Rz. 58-63., H/B. 514
- 56 Welter//Caron, Rz. 114., H/B, 361.
- 57 Hoogendoorn//Rogmans, Rz. 150-155., H/B. 813-815

58 Löwisch, 1191.; Hennsler/Braun (Hrsg.), L. see at each country under the title of Haftung des Arbeitnehmers

59 Radoccia, Rz. 338-339; Erken, Rz. 79-82

60 Hart/Taggart, Rz. 67-68

61 Pelzmann, Rz. 195-200; Matray/Hübinger, Rz. 100; Zimoch-TuchoŁka/Malinowska-Hyla, Rz. 194; Linhart/Ranics, 115; Markecova/Klimanova, Rz. 16-127;

62 Löwisch, 1191-1196; Steinrücke/Würz, Rz. 119, H/B. 247; Welter/Caron, 180-186; Radoccia, 337-338; Fedtke/Fedtke, Rz. 103; Calle/Prehm, Rz. 123; Kurz, Rz. 156, Gotha, Rz. 170